

EQUITABLE RELIEF GRANTED BY THE  
SECRETARY OF VETERANS AFFAIRS  
IN CALENDAR YEAR 2005

CASE #1

The veteran filed two claims for entitlement to an automobile allowance. The first rating dated April 17, 2004, indicated that the veteran was not eligible for and automobile allowance however VA erroneously granted the allowance in a letter dated April 28, 2004. A second claim for entitlement was received in May, and again VA responded by approving the application on July 7, 2004. VA then received an invoice from a car dealer dated July 19, 2004, for a Chrysler van for which the veteran had taken possession without making any payment. applied, because he had already received this one-time benefit. In April 2004, the regional office requested equitable relief for the veteran. The Secretary granted equitable relief in the amount of \$10,650 to the car dealer according to 38 U.S.C. § 503(b) since the dealership had supplied the van to the veteran based on two erroneous notices of approval from VA Regional Office.

CASE #2

The veteran was discharged on October 10, 2000, applied for compensation and pension benefits on October 11, 2000, and applied for Chapter 31 benefits (Vocational Rehabilitation) on November 17, 2000. The veteran was granted a combined service-connected disability rating of 80% on May 8, 2002 with an effective date of October 12, 2000. The veteran's application for Chapter 31 benefits was lost in her files and not properly noted of the pending application for disability benefits. She was denied Chapter 31 benefits on May 16, 2002, because there was no indication of the disability claim. This determination was corrected by the Regional Office on June 10, 2002. During the two year period between the initial filing of the applications and the determinations by VA, the veteran attended MBA classes incurring student loans to pay for the education. The veteran wishes to recover \$4,500.52 in equitable relief to cover the interest on her loans incurred while waiting for the disability rating the approval of her Chapter 31 benefits. The Secretary granted equitable relief for \$4,500.52 under 38 U.S.C. § 503(a) to correct the administrative delays in these decisions.

CASE #3

The veteran served in the Air Force from 1986 to 1998. On retirement he was eligible for Montgomery GI Bill benefits. Before applying for MGIB, the veteran contacted VA Central Office Education Service and the Texas State Approving Agency (SAA) to determine whether his course of study would be eligible for MGIB benefits. The veteran was pursuing a Certificate Program in Software Project Management from the University of Texas, Austin. Texas SAA contacted VA Education Service on March 18, 1999, to determine if this program was

approved. On May 19, 1999, VA Education Service notified Texas SAA that the program could not be approved as constituted. This was communicated to the school on June 3, 1999. A letter from VA Education Service to the veteran in September 2000, reiterated the decision but advised the veteran he would be informed if there was a change to this decision. In March 2001, the program was approved with a retroactive date of February 18, 1999. The veteran submitted a claim for MGIB on August 21, 2001, based on his enrollment in the Certificate Program in Software Project Management at the University of Texas, Austin. That same day the Regional Office received an enrollment certificate from the University certifying the veteran's enrollment from March 1999, to May 2000. The Regional Office denied this claim since the earliest benefits could be paid was August 27, 2000, one year prior to receipt of his application. The veteran questioned this decision and informed the Regional Office of the timeline of events which included him inquiring about the school's eligibility early in 1999. The veteran assumed that his communication with VA constituted an official determination concerning his claim. VA had never informed the veteran of the necessity for filing a formal claim to start the effective date sunning. 38 C.F.R. § 3.155 defines an informal claim as any communication indicating an intent to apply for a benefit. Under this definition, the veteran had been in documented communication with VA on May 12, 2000. This date can be considered an informal claim date, allowing retroactive benefits to be paid from May 12, 1999, one year prior to receipt of his informal claim. The Secretary granted equitable relief under 38 U.S.C. § 503(a) in the amount of \$1,589.80, which represented MGIB benefits for the period May 12, 1999 through May 9, 2000.

#### CASE #4

The veteran served in the Navy from May 1977 to August 1992, and from March to September 1998. She qualified for Montgomery GI Bill (MGIB) benefits. On October 23, 2001, the veteran was informed by Buffalo VA customer Service that she was eligible for MGIB benefits while attending Washington On-Line-Learning Institute. Generally, a statement made by a VA phone representative in response to any inquiry is not considered a determination of eligibility or entitlement. However, the veteran received a Certificate of Eligibility dated November 23, 2001, confirming the phone conversation. The veteran enrolled in Washington On-Line Learning Institute for the November 5, 2001 to August 26, 2002 term. Her enrollment occurred after the verbal communication but before receipt of Certificate of Eligibility. If she had not enrolled in this term, she would have had to delay her enrollment for a year. The veteran was required to pay \$2,925 tuition for this term by October, 29, 2001. The veteran was notified on December 26, 2001, that benefits would not be payable for Washington On-line Learning Institute to Chapter 30 recipients, only to recipients under Chapter 31(Vocational Rehabilitation). At this point, the veteran would only receive a \$500 refund for books, so she continued with the course. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$2,925.00, the full tuition paid by the veteran for enrollment Washington On-line Learning Institute

since the veteran had relied on erroneous information provided by the Regional Office..

#### CASE #5

The veteran was placed by VA Healthcare at a local VA contract community nursing home in May 2000 under a 33-day contract. When the contract ran out, the veteran still required nursing home care which was provided from June 2000 through May 2003 under private pay. The veteran expended \$123,028.75 of personal funds and utilized approximately \$111,000.000 of Medicaid funds to pay for her care during from June 2000 to May 2003. During this period, it was discovered that the veteran met the provisions of the Millennium Health Care and Benefits Act, Public Law 106-177, and her health care has been provided at VA expense since June 2000. Certain provisions of the Millennium Act require VA to provide nursing home care when medically indicated to veterans with a combined VA service connected rating of 70% or greater, those seeking such care for a service-connected condition, and those with a VA rating of unemployable. Other veterans can receive community nursing home care at VA expense when funding allows. In this instance, the veteran relied on the erroneous eligibility decisions made by VA Healthcare and suffered a loss as a consequence. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$123,028.75, the amount expended by the veteran on her nursing home care based on erroneous decisions of VA Healthcare. While Medicare is not requesting reimbursement of their money expended on behalf of the veteran, in the future it may be necessary to consider additional equitable relief in the amount of \$111,000 for Medicare payments made on behalf of the veteran.

#### CASE #6

The subject applied for CHAMPVA benefits from the Health Administrative Center (HAC) in November 1990. Although the subject was under age 65 and only had Medicare Part A coverage, she was approved for CHAMPVA payment for nine outpatient health visits. CHAMPVA requires Medicare Parts A and B for coverage of all applicants under age 65. The cost of these visits totaled \$2,964.68, which originally was paid directly by the HAC to the medical care provider. The medical care provider subsequently refunded VA's payment in full, and began seeking payment from the subject for the full amount. The subject would not have incurred these expenses if she had not relied on the incorrect determination of CHAMPVA eligibility made by the HAC. The medical care provider would not have provided the services without guarantee of payment by the HAC's pre-approval. The Secretary granted the subject equitable relief under 38 U.S.C. § 503(b) in the amount of \$2,964.68, coverage for payments to a medical care provider for services based on the incorrect determination of the HAC.

#### CASE #7

The veteran served in the Air Force from 1977 to 1980, from 1981 to 1983, and 1984 to 1995. She was eligible for education benefits under the Vietnam-Era GI Bill (Chapter 34) and for conversion to Montgomery GI Bill benefits (Chapter 30).. Because The veteran had breaks in service, the law (38 U.S.C. § 3031(e)(1)) provides that her 10-year eligibility period be reduced by the amount of time for which she was not on active duty between January 1, 1977, to June 30, 1985. The veteran applied for benefits on July 3, 2001, and the regional processing office (RPO) authorized a Certificate of Eligibility on August 31, 2001, with a delimiting date of October 1, 2005. However, because of her breaks in service the correct delimiting date was April 17, 2003. The RPO processed 6 enrollment certificates from an educational institution for the veteran for terms occurring between October 2001 and February 2003. On June 3, 2003, the educational institution certified the veterans for two terms occurring during the summer, 2003. On July 1, 2003, the educational institution certified an additional summer term. On July 11, 2003, the RPO realized an error had been made in computing the veteran's delimiting date and action was taken to stop educational benefits. The RPO issued a computer-generated letter providing the veteran with the correct delimiting date and stopping her benefits. The veteran called the RPO on July 22, 2003, to find out why the delimiting date was changed. At that time, the RPO representative was unable to explain the change and had to refer the veteran to a supervisor. The supervisor called the veteran and explained the change to her delimiting date. The veteran requested equitable relief for her 2003 summer classes, and also for the remainder of the course of study for a doctorate in which she is enrolled. She asserted that she would not have begun the degree program without the assurance that she had educational benefits to cover it. The Secretary granted equitable relief under 38 U.S.C. § 503(b) of \$5,183.86, the benefits the veteran would have received during the three 2003 certified summer terms in question.

#### CASE #8

In September 2003 the veteran filed a second VA Form 21-4502 requesting an automobile allowance for adaptive equipment although he had already received the one-time-only automobile allowance in 1971. The VARO told the veteran that he was eligible for an automobile allowance of up to \$9,000 even though he indicated on the form that he had already received an automobile allowance. In reliance on this determination, the veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement in October 2003. In February 2004, the veteran was informed that he was not eligible for the automobile allowance.. At no point during this process did VA inform the veteran that he was not eligible for the benefit for which he had applied, because he had already received this one-time benefit. In April 2004, the regional office requested equitable relief for the veteran. The Secretary granted equitable relief in the amount of \$9,000 according to 38 U.S.C. § 503(b) for a second allowance since VARO failed to inform him that this was a one-time benefit.